

Message Text

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70

ACTION ARA-10

INFO OCT-01 ISO-00 ERDA-05 AID-05 CEA-01 CIAE-00 CIEP-01

COME-00 DODE-00 EB-07 FPC-01 H-02 INR-07 INT-05 L-03

NSAE-00 NSC-05 OMB-01 PM-03 USIA-06 SAM-01 OES-03

SP-02 SS-15 STR-04 TRSE-00 FRB-03 FEA-01 INRE-00

NSCE-00 SSO-00 PA-01 PRS-01 USIE-00 OPIC-03 /097 W

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O R 032240Z JUN 75

FM AMEMBASSY QUITO

TO SECSTATE WASHDC IMMEDIATE 5798

INFO AMCONSUL GUAYAQUIL

LIMITED OFFICIAL USE QUITO 3873

E.O. 11652: N/A

TAGS: EINV, EC

SUBJECT: ADA CASE

1. FOLLOWING IS INFORMAL EMBASSY TRANSLATION OF
TEXT OF LETTER OF MAY 27 FROM MINISTER OF NATURAL
RESOURCES AND ENERGY, LUIS SALAZAR TO K.S. ADAMS, JR.,
OF ADA PETROLEUM EXPLORATION COMPANY: QUOTE:
PLEASE BE ADVISED THAT THE NATIONAL GOVERNMENT ADOPTED
THE FOLLOWING RESOLUTION AT A CABINET MEETING ON
APRIL 29, 1975:

1. LETTER NO. 74-258-CA OF SEPTEMBER 24, 1974, SENT
BY THE MINISTER OF NATURAL RESOURCES TO THE DIRECTOR
GENERAL OF HYDROCARBONS, THE MINISTER OF FINANCE AND
THE PRESIDENT OF THE NATIONAL PLANNING BOARD, TO REQUEST
THE QUOTE APPOINTMENT OF A DELEGATE AS A MEMBER OF
THE AUDITING SUB-COMMISSION THAT WILL WORK WITH THE
MANAGER OF ADA FOR THE PURPOSE OF DETERMINING THE
AMOUNT OF THE INVESTMENTS OF THAT COMPANY IN THE
ACTIVITIES IT CARRIED OUT IN THE GULF OF GUAYAQUIL,

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UNQUOTE IS DECLARED TO BE NULL AND VOID.

2. THE DESIGNATION OF AN INTER-INSTITUTIONAL COMMISSION MADE BY THE MINISTER OF NATURAL RESOURCES IN SEPTEMBER, 1974, WHICH WAS COMPOSED OF THE ECONOMISTS MARCELO CHECA MADERA, MIGUEL CASTELO LEON, ARCO NUNEZ T., ROLANDO PERALTA N., AND ENGINEERS RODRIGO TIRADO SORIA AND CARLOS DELGADO RUEDA, AS WELL AS HIS REPORT CONTAINED IN MEMORANDUM NO. 007413-DGH-DA-CF OF DECEMBER 3, 1974, SUBMITTED TO THE MINISTER OF NATURAL RESOURCES, ARE DECLARED TO BE NULL AND VOID.

3. LETTERS NOS. 13-75-SRNE, 14-75-SRNE, 15-75-SRNE, 16-75-SRNE, 19-75-SRNE, AND 20-75-SRNE OF JANUARY 27, 1975 AND SIGNED BY THE ACTING MINISTER OF NATURAL RESOURCES AND SENT TO THE REPRESENTATIVES OF THE FIRMS PETROLERA DE LA COSTA C.A., MINERA BOLIVAR C.A., GOLDEN EAGLE DEL ECUADOR, C.A., SANTA ELENA C.A., GUAYAS, C.A., HUMBOLDT C.A., TRASERCO C.A., AND ADA DE EXPLORACION PETROLERA C.A., RESPECTIVELY, ARE ALSO DECLARED TO BE NULL AND VOID, AS WELL AS ANY ACTS WHICH MAY HAVE BEEN PERFORMED AS A RESULT OF, OR IN CONNECTION WITH, THOSE LETTERS.

4. THE NULLIFICATION OF THE ADMINISTRATIVE ACTS ABOVE REFERRED TO IS BASED ON THE FACT THAT SUCH ACTIONS ARE IN VIOLATION OF THE PROVISIONS IN DECREE 1391 OF NOVEMBER 28, 1972, PUBLISHED IN OFFICIAL REGISTER 197 OF DECEMBER 4, 1972, AS WELL AS A RESOLUTION OF THE NATIONAL GOVERNMENT ADOPTED AT A SESSION OF THE CABINET ON JULY 23, 1974.

5. TO REJECT THE CONTENTS OF THE COMMUNICATIONS SENT BY YOU TO THE UNDERSIGNED, IN MY CAPACITY AS MINISTER OF NATURAL RESOURCES AND ENERGY, ON JANUARY 16 AND APRIL 10, 1975, NOT ONLY FOR THE REASON STATED ABOVE, BUT ALSO BECAUSE:

(A) THE GOVERNMENT IS THE SOLE OWNER OF THE MATERIALS, EQUIPMENT, INSTALLATIONS AND OTHER ITEMS EXISTING IN THE GULF OF GUAYAQUIL, AS WELL AS ALL PROPERTY RELATING TO THE EXPLORATION WORK IN THAT GULF IN COMPLIANCE WITH LIMITED OFFICIAL USE

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THE PROVISIONS IN ARTICLE 8 OF DECREE 1391 OF NOVEMBER 28, 1972 AND ARTICLE 27 OF THE HYDROCARBON LAW.

(B) THE GOVERNMENT DESIGNATED A HIGH-RANKING COMMISSION TO CONSIDER AND DECIDE UPON ANY MATTERS RELATING TO ALLEGED RIGHTS OF THE ADA GROUP.

FROM ALL OF THE FOREGOING THE FOLLOWING CONCLUSIONS ARE REACHED AS THE BASIC AND FINAL POLICY OF THE NATIONAL GOVERNMENT:

1. THE NATIONAL GOVERNMENT HAS AT NO TIME AND UNDER NO CIRCUMSTANCES DECIDED TO PAY ANY AMOUNTS TO THE ADA CONSORTIUM AS ALLEGED COMPENSATIONS FOR WORK AND INVESTMENTS MADE IN THE GULF OF GUAYAQUIL.

2. THE AREAS CONTAINING HYDROCARBONS IN THE GULF OF GUAYAQUIL, WHICH HAD BEEN TRANSFERRED TO THE ADA CONSORTIUM BY ECUADOREAN CITIZENS AND EVERYTHING EXISTING THEREIN, ARE THE PROPERTY OF THE GOVERNMENT EXCLUSIVELY, AS A RESULT OF THE REVERSION PRESCRIBED IN ARTICLE 8 OF DECREE 1391 OF NOVEMBER 28, 1972.

3. DECREE 1391, ABOVE REFERRED TO, IS A LAW OF THE REPUBLIC AND THEREFORE ITS PROVISIONS CANNOT BE IGNORED FOR ANY REASON. THEY SHOULD RATHER BE APPLIED WITHOUT ANY ARGUMENTS, SO THAT, AS REGARDS HYPOTHETICAL INDEMNIFICATIONS, THE PARTIES SHOULD ABIDE BY THE STIPULATION IN ARTICLE 8, WHICH READS AS FOLLOWS: QUOTE AND NEITHER THE CONCESSIONARIES NOR ANY THIRD PARTIES MAY RETAIN OR CLAIM FROM THE GOVERNMENT ANY RIGHTS WHATEVER TO SUCH AREAS, OR ANY INDEMNIFICATIONS FOR ANY REASON. UNQUOTE.

AS EXPLAINED ON SEVERAL OCCASIONS, THIS DECREE IS OF A PUNITIVE NATURE, AS A RESULT OF A CONTRACTUAL PROCEDURE OF AWARD TO THE ADA CONSORTIUM UNDER WHICH SIGNATURES WERE COUNTERFEITED IN PUBLIC INSTRUMENTS, SOME PERSONS WERE SUBSTITUTED FOR OTHERS, BRIBES WERE PAID, ETC., AND THIS IS WHY THE ECUADOREAN GOVERNMENT ISSUED DECREE 1391.

4. THE NATIONAL GOVERNMENT, FOR TAKING COGNIZANCE OF, PROCESSING AND DECIDING ON, ANY MATTER RELATING TO THE ALLEGED RIGHTS OF THE ADA CONSORTIUM TO THE HYDROCARBON AREAS IN THE GULF OF GUAYAQUIL, DESIGNATED A SPECIAL COMMISSION COMPOSED OF THE DIRECTORS OF CEPE, LIMITED OFFICIAL USE

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THE MINISTER OF FOREIGN RELATIONS, THE MINISTER OF GOVERNMENT AND THE ATTORNEY GENERAL OF ECUADOR. THIS COMMISSION IS THE ONLY BODY HAVING CAPACITY AND COMPETENCE FOR DECIDING ON ANY PROBLEM RELATING TO THE ALLEGED RIGHTS CLAIMED BY THE ADA CONSORTIUM. IN CONCLUSION, I MUST TELL YOU THAT, SINCE ALL ACTS PROHIBITED BY THEM ARE NULL AND VOID, AND SINCE SUPREME DECREE 1391 OF NOVEMBER 28, 1972 PROHIBITS PAYMENT OF ANY KIND OF INDEMNIFICATIONS TO THE ADA CONSORTIUM, ANY AND ALL ACTS PERFORMED IN ACCORDANCE WITH THE DOCUMENTS ABOVE REFERRED TO ARE NULL AND VOID AND HAVE NO VALIDITY AS EXPRESSLY DECLARED. MOREOVER, SINCE THEY ARE MERE ADMINISTRATIVE ACTS WHICH ARE SUBJECT TO REPEAL, AMENDMENT OR NULLIFICATION, THEY CANNOT VIOLATE OR AMEND A LAW AND THEY SHOULD BE DECLARED

TO BE NULL AND VOID BY VIRTUE OF THE SAME ADMINISTRATIVE
PROCEDURE. UNQUOTE.
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Disposition Date: 28 MAY 2004
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Disposition History: n/a
Disposition Reason:
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Margaret P. Grafeld
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To: STATE
Type: TE
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